



JUNE 2003 AGENDA

**SUBJECT:**

Direct request from the Tri-County SELPA to dissolve effective June 30, 2003, and instead form three separate, single-county SELPAs in Amador, Calaveras, and Tuolumne counties effective July 1, 2003.

<input checked="checked" type="checkbox"/> ACTION
<input type="checkbox"/> INFORMATION
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**RECOMMENDATION:**

State Board of Education staff recommend that (1) the Tri-County SELPA's request be denied and (2) the State Superintendent be directed not to approve any similar request from the Tri-County SELPA under the delegated approval authority created in January 2000.

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Summary of Previous State Board of Education Discussion and Action.

In January 2000, the State Board of Education delegated authority to approve local SELPA plans to the State Superintendent of Public Instruction, subject to appeal to the State Board.

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Summary of Key Issue(s).

In July 2002, the Tri-County SELPA submitted a request for reorganization into three separate, single-county SELPAs (Amador, Calaveras, and Tuolumne counties) effective July 1, 2003. Following lengthy discussion and consideration at the staff level, the Tri-County SELPA was encouraged by the CDE to withdraw its request because of unresolved issues related to fiscal impact, programmatic impact, and timeliness. The Tri-County SELPA elected instead to make a direct appeal to the State Board.

There are three reasons that State Board staff recommend denial of the Tri-County SELPA's request and direction to the State Superintendent not to approve any similar request under the delegated authority:

- **Fiscal.** Under this proposal, the Tri-County SELPA (which currently qualifies for approximately \$250,000 annually for regionalized services) would be broken up into three much smaller SELPAs (each of which would qualify separately for the minimum floor of approximately \$200,000 annually for regionalized services). The net increase in state special education funding to the region would be approximately \$350,000 per year. Although there appears to be no statutory prohibition on breaking-up a multiple-county SELPA to qualify each SELPA separately for the minimum funding level, it appears clear that the statute establishing the minimum funding level for necessary small SELPAs was not envisioned as a means of garnering additional revenues through local organizational rearrangement. Moreover, the State Board generally has not used its discretionary authority to approve requests substantially increasing state costs, unless that intent has been clear within statute (e.g., the statute that expressly provides for a waiver of the instructional time penalty under specified conditions).

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- Programmatic. The proposal does not make a cogent argument that the current three-county arrangement per se creates a structural barrier to meeting the needs of the region's special education students. Rather, the proposal focuses on the capacity of the individual counties separately to address the special education students' needs. In that way, it endeavors to provide an answer to a question that has not been asked. The real programmatic question is why three smaller SELPAs would be better than a single larger one. The answer is that programmatically three smaller SELPAs would be at best equal in the ability to meet students' needs, but would be no better.
- Procedural. Once a SELPA has chosen to make a direct request (appeal) to the State Board, the authority delegated to the State Superintendent for approval of SELPA plans should no longer be applicable to that request. The matter should remain under the State Board's immediate control.

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Fiscal Analysis (as appropriate).

The fiscal effect of approval of the Tri-County SELPA's request is summarized above.

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Background Information attached to this Agenda Item.

1. Request from the Tri-County SELPA, dated July 8, 2002
2. Summary of Key Points Discussed by Telephone with Representatives of the Tri-County SELPA on April 29, 2003
3. Letter from John Brophy to Alice Parker, dated May 6, 2003
4. Letter (of direct request) from John Brophy to State Board of Education, dated May 9, 2003

## Attachment 1

Request from the Tri-County SELPA, dated July 8, 2002

[Available in hard-copy only.]

## Attachment 2

Summary of Key Points Discussed by Telephone with  
Representatives of the Tri-County SELPA on April 29, 2003

Jack O'Connell  
State Superintendent of Public Instruction

Summary of Key Points Discussed by Telephone with  
Representatives of the Tri-County SELPA on April 29, 2003

**Background**

On July 8, 2002, the California Department of Education (CDE), Special Education Division (SED), received a request from the Tri-County Special Education Local Plan Area (SELPA) to reorganize into three new SELPAs, effective with the 2003-04 fiscal year. The request has been thoroughly analyzed by SED staff over many months, during which they have been in frequent contact with Tri-County SELPA personnel, keeping Tri-County SELPA apprised of issues, concerns, and needs for additional information. SED staff has been assisted by representatives of the CDE School Fiscal Services Division and the CDE Legal Division.

**Conclusion**

CDE/SED is not prepared to recommend approval of the request at this time because of serious unresolved concerns and encourages the Tri-County SELPA to withdraw the request for the new organizational arrangement to take effect in 2003-04.

**Fiscal Impact**

When proposing new SELPAs, local education agencies (LEAs) are asked to evaluate whether there is a potential for significant adverse fiscal effects on one or more of the LEAs as a result of a change in the current plan. In this case, CDE has not received from each of the respective county offices of education (COEs) an analysis of the potential adverse fiscal effects of the proposed reorganization.

State enrollment data indicate a trend toward declining enrollment in Tuolumne County. Such a trend would likely cause Tuolumne County to experience a relative decrease in available resources as a single-county SELPA when compared to its continued participation as a member of the Tri-County SELPA.

The Tri-County SELPA maintains a sizeable reserve to support the nonpublic school (NPS) placements of students residing throughout the three counties. The SELPA has reported that Amador County, which accounts for approximately 28% of the SELPA's total ADA, has, in the past, expended as much as 50% of the available NPS reserve. As a single-county SELPA, Amador County would likely not have access to sufficient resources to support an unexpected increase of NPS placements.

As part of the analysis of the request to reorganize, CDE asked each of the proposed SELPAs to submit, no later than March 10, 2003, a proposed annual fiscal plan, pursuant to EC Section 56205(b)(1). While each proposed new SELPA outlined the expenditure of projected funds, the

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proposed annual fiscal plans did not address potential funding shortfalls resulting from such factors as declining enrollment and NPS placements.

The CDE School Fiscal Services Division reports that total State funding for Amador, Calaveras, and Tuolumne Counties might increase as a result of reorganization. The projected increase would be the product of minimum funding for regionalized services in each of the proposed new SELPAs, pursuant to EC § 56836.24(a), as opposed to funding now allocated to the Tri-County SELPA as a whole. CDE assumes that such an increase would result in a proportionate decreased apportionment to other SELPAs statewide.

The CDE review team has recommended that analysis of the Tri-County SELPA's request to reorganize be delayed until after CDE has received:

- ❖ an analysis of the potential adverse fiscal effects of the proposed reorganization from each of the respective COEs, and
- ❖ proposed annual fiscal plans that more fully address the potential negative fiscal impact of reorganization from each of the proposed new SELPAs.

If the fiscal documents were received by CDE no later than October 1, 2003, the resulting CDE analysis could be completed no later than January 1, 2004, with possible implementation of the proposed new SELPAs on July 1, 2004.

### **Timeliness**

The CDE School Fiscal Services Division reports that reorganization of the Tri-County SELPA would have ramifications on the statewide system of SELPA apportionments. Ensuring proper recalculation on a statewide basis requires close attention to detail. School Fiscal Services Division staff believe that approximately six months lead time would be necessary to avoid mistakes that could adversely affect the flow of funds both to the proposed new SELPAs (in Amador, Calaveras, and Tuolumne counties) and to SELPAs in other areas of the state.

Accordingly, the CDE/SED staff have concluded that the Tri-County SELPA's request to reorganize should be delayed to 2004-05. If the request to reorganize were approved by January 1, 2004, School Fiscal Services could reasonably calculate statewide SELPA apportionments with possible implementation of the proposed new SELPAs on July 1, 2004.

### **Program Impact**

When formation of a new SELPA is proposed, an affected COE is asked to evaluate whether there is potential for significant adverse programmatic effects on one or more LEAs as a result of a change in the current plan. In this case, the CDE has not received from each of the respective COEs an analysis of the potential adverse programmatic effects of the proposed reorganization.

While each proposed new SELPA submitted an overview of service delivery options, at least two concerns were not adequately addressed:

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- ❖ The negative fiscal impact in Tuolumne County resulting from decreased ADA would likely have a concomitant programmatic impact.
- ❖ The negative fiscal impact in Amador County resulting from decreased access to NPS funding would likely have a concomitant programmatic impact.

The CDE/SED staff have recommended that analysis of the Tri-County SELPA's request to reorganize be delayed at least until the CDE has received:

- ❖ an analysis of the potential adverse programmatic effects of the proposed reorganization from each of the respective county offices of education, and
- ❖ proposed annual service plans that more fully address the potential negative programmatic impact of reorganization.

If the program documents were received by CDE no later than October 1, 2003, the resulting CDE analysis could be completed no later than January 1, 2004, with possible implementation of the proposed new SELPAs on July 1, 2004.

### **Size and Scope Requirements**

It is anticipated that the State Board of Education will soon consider SELPA size and scope standards, updating the standards originally approved in 1983. The purpose of the SELPA size and scope standards is to ensure that SELPAs are of sufficient size to provide effectively for the needs of special education students for programs and services. Obviously, SELPA size and scope standards incorporate latitude for SELPAs in sparsely populated areas, as does the system of funding. However, nowhere in statute or in the original 1983 size and scope standards is it anticipated or envisioned that a SELPA, once having been created, would be dissolved into smaller units. It is highly unlikely, moreover, that any such anticipation will be incorporated into the updated size and scope standards the State Board eventually adopts.

### **Compliance Monitoring**

CDE/SED staff members are not convinced that all LEAs in the Tri-County SELPA offer access to a true full continuum of program placement options consistent with the requirements of 34 CFR § 300.551. Tri-County SELPA officials and representatives of member districts have suggested that some LEAs offer only their local version of a "learning center" or "imbedded special day class" as the placement option available to mildly and/or moderately disabled students. In addition, it has been reported that students with more intensive needs, especially those in the most sparsely populated areas, are generally placed either in some variation of a "learning center" or in a nonpublic school. Such allegations cast doubt upon the assertion by each of the proposed new SELPAs that a full continuum of program placement options would be available and that each student's individualized education program (IEP) would be developed and implemented in accordance with law.

The CDE recommends focused monitoring of the Tri-County SELPA's instructional programs before further consideration is given to the SELPA's request to reorganize.

### Attachment 3

Letter from John Brophy to Alice Parker, dated May 6, 2003

[Available in hard-copy only.]



## Attachment 4

Letter (of direct request) from John Brophy to  
State Board of Education, dated May 9, 2003

[Available in hard-copy only.]